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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Applicant	:	Tang et al.
App. No	:	10/821,806
Filed	:	April 9, 2004
For	:	FLOATING PLANT CULTIVATION PLATFORM AND METHOD FOR GROWING TERRESTRIAL PLANTS IN SALINE WATER OF VARIOUS SALINITIES FOR MULTIPLE PURPOSES
Examiner	:	John D. Holman
Art Unit	:	3643

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Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Dear Sir:

Applicants request review of the legal and factual basis of the rejections in the October 31, 2006 Final Office Action in the above-identified application. No amendments are being filed with this request.

This request is being filed with a Notice of Appeal.

The review is requested for the reason(s) stated in the accompanying Remarks, which begin on page 2 of this paper.

REMARKS

Claims 1-26, 29 and 30, drawn to flexible plant cultivation systems for growing terrestrial plants in saline water, are pending in the present application. The claims stand rejected in the Final Office Action mailed on October 31, 2006 under 35 U.S.C. §102 or 35 U.S.C. §103 for the reasons discussed below. As explained below, Applicants request pre-appeal-brief review of the pending rejections.

Claim Rejections Under 35 U.S.C. §102

The Examiner maintained the rejection of claims 1-3, 6, 10-14, 24-26 and 30 under 35 U.S.C. §102(b) as being anticipated by Kitsu (U.S. Patent 4,382,348). The Examiner asserted that Kitsu discloses the plant cultivation system as claimed and further, that the plant cultivation device is to be used in pond water.

Claim 1 recites a plant cultivation system for growing terrestrial plants in saline water comprising a plant support comprising a flexible buoyant portion. Kitsu discloses a soilless plant growing device that can float. However, Kitsu does not teach or suggest a plant cultivation system comprising a plant support comprising a flexible buoyant portion as claimed. The drawings and disclosure of Kitsu demonstrate that the devices of Kitsu require frames made of rigid materials such "hard synthetic resin." *See, e.g.*, column 6, line 35. As Kitsu does not teach every feature of the claimed subject matter, Kitsu does not anticipate claim 1 nor its dependent claims, including claims 2-3, 6, 10-14, 24-26 and 30. However, although the Examiner entered an amendment reciting the "flexible buoyant portion," which amendment was submitted after a Final Office Action, he did not address, and did not appear to have considered the amendment in his Advisory Action. Applicants consider that the amendment, having been duly entered, further clarifies the patentability of the claims and likewise makes the claims ripe for appeal. Accordingly, Applicants respectfully request reconsideration and review of the §102 rejection via Pre-Appeal-Brief Review.

Furthermore, the Examiner maintained the rejection of claims 1-3, 6, 10-14, 24-26 and 30 under 35 U.S.C. §102(b) as being anticipated by Kitsu (U.S. Patent 4,382,348) because the Examiner interpreted Kitsu's disclosure of use as a pond device to include use in saline water. Applicants maintain that such rejection is in error, as the Examiner's sole point of any alleged

nexus between the saline water that is a positive feature of the present claims, and the water of Kitsu, is the use of the word “pond” in both disclosures.

Kitsu’s only mention of “pond” is at column 4, lines 25-27, and is in the following context: “That is, the device can also be used in a pond, river, *or other suitable nutrient solution source.*” Kitsu defines “nutrient solution” as: “any cultivating solution including plain water, water in which fertilizer or other nutrient material has been dissolved, or the like.” There is no indication in Kitsu that salt would be considered a “nutrient,” and it is plain from the entire disclosure of Kitsu that saline water was never contemplated as a “nutrient solution.” In Applicants’ disclosure, it is consistent and completely clear that the types of ponds referred to are saline ponds. In contrast, there is no indication that a saline pond would be acceptable as a “nutrient source” in Kitsu’s system. Accordingly, the rejection is based solely upon the fact that both disclosures use the word “pond,” even though any person of ordinary skill would immediately recognize that the types of ponds referred to in the two different disclosures are not the same.

Therefore, in view of the foregoing remarks, Applicants also respectfully request pre-appeal-brief review and withdrawal of the §102 rejection.

Claim Rejections Under 35 U.S.C. §103

The Examiner maintained the rejection of claims 4, 5, 7-9, 15-19, 20-22, 23 and 29 under 35 U.S.C. §103(a) as being unpatentable over Kitsu alone or in view of Raskin (U.S. Patent 5,876,484), Shryock (U.S. Patent Application No. 10/223,803, published as U.S. 2003/0049392), or Koide (U.S. Patent 5,261,185) based on the arguments provided in an Office Action dated June 6, 2006.

As discussed above, claim 1, from which claims 4, 5, 7-9, 15-19, 20-22, 23 and 29 depend, recites a plant cultivation system for growing terrestrial plants in saline water comprising a plant support comprising a flexible buoyant portion. The Examiner did not appear to consider the “flexible buoyant portion” recitation of the claims. Furthermore, Kitsu does not disclose or even contemplate a system involving saline water. Therefore, Kitsu does not teach or suggest all the features, namely, the flexible buoyant portion and the positive recitation of contact with saline water, of the claimed subject matter. The cited documents of Raskin, Shryock and Koide do not remedy the deficiencies of Kitsu with respect to these features.

Therefore, as Kitsu alone or in combination with Raskin, Shryock and Koide do not teach or suggest all the features of the claims, Applicants respectfully submit that the claims are in condition for allowance and request the withdrawal of the §103 rejection.

Conclusion

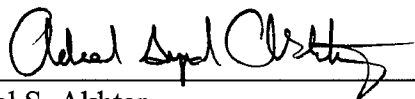
Applicants have endeavored to address each of the pending rejections and respectfully request review of the same. If, after review, the panel should find any remaining impediment to allowing one or more of the claims, Applicants respectfully request that the panel decision specifically address any such remaining rejection(s) to permit Applicants to determine any necessary follow up actions.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: February 28, 2007

By: 

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